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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210103
Party	Plaintiff The Coca-Cola Company
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Signature	/Cynthia R. Parks/
Date	07/23/2013
Attachments	Opposer's Response.pdf(43648 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Application Nos. 85/672,347 and 85/672,347
Marks: COLA DE COKI and COKI COLA HAPPY MOTION
Filed: April 4, 2010 and July 10, 2012
Published: October 2, 2012 and December 18, 2012

THE COCA-COLA COMPANY

Opposer,

v.

WILLIAM SOLER, DBA COLA DE COKI,

MIRIAM SOLER

and

ALBERTO SOLER, DBA COKI LOCO

Applicants.

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Opposition Nos. 91209094 and 91210103

OPPOSER'S RESPONSE TO APPLICANTS' AMENDED MOTION TO DISMISS

Opposer The Coca-Cola Company ("Opposer"), by and through its undersigned counsel and in accordance with Rule 2.127 of the Trademark Rules of Practice, files this response to the Amended Motion to Dismiss filed by Applicant Alberto Soler on July 15, 2013. It is unclear from the Applicant's motion whether it was filed on behalf of all applicants with regard to both of the above-captioned applications, as Mr. Soler makes no reference to the other applicants while including both applications in the caption of his motion.

Alberto Soler has requested that the Board dismiss the '094 Opposition and the '103 Opposition proceedings unless Opposer "pleads acquired distinctiveness to avoid dismissal." Opposer notes that the proceedings are currently suspended based upon Applicant's previous Motion to Dismiss and that any papers filed during the pendency of the suspension which are not relevant to Applicant's previous motion will be given no consideration by the Board.

MOTION WAS IMPROPERLY AND UNTIMELY FILED

As noted above, the subject Oppositions are currently suspended pending the Board's decision on Applicant's previous Motion to Dismiss. According to the rules of the TTAB, "Once the Board has suspended proceedings in a case, pending determination of a potentially dispositive motion, no party should file any paper that is not germane to the motion." TTAB Manual of Procedure, §501.03(a). The current "Amended Motion to Dismiss" is not germane to the previous motion, as it is comprised of unclear and inaccurate statements relating to a cancellation action filed by Opposer against a registration not included in the subject Oppositions. Furthermore, a party may amend its pleading within 21 days after serving it, and the Applicant's previous motion was filed several months ago, on April 22, 2013, making the timing of this amended motion well outside the approved period for filing. *Id.*, §507.01.

In accordance with Opposer's counsel's conversation with the Interlocutory Attorney for this Opposition, Opposer will not compound the confusion created by Applicant's improperly and untimely filed motion by submitting a substantive response at this time. Opposer reserves all right to respond to the motion if directed by the Board to do so after the resolution of Applicant's original Motion to Dismiss.

Respectfully submitted, this 23rd day of July, 2013

PARKS IP LAW LLC

/s/ Cynthia R. Parks
Cynthia R. Parks

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Opposer's Response to Applicants' Amended Motion to Dismiss in the above-captioned matter upon Applicant, by email and by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the correspondence address of record for the Applicant as follows:

Alberto Soler
c/o Jorge L. Flores P.A.
7700 North Kendall Drive
Suite #701
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This 23rd day of July 2013

/s/ Cynthia R. Parks
Cynthia R. Parks